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AUG 13 2008

In re Application of :  
ANDROS, et al. :  
Application No. 09/751,815 :  
Filed: December 29, 2000 :  
Attorney Docket No. 6988-1 :  
DECISION ON PETITION  
UNDER 37 CFR 1.137(b)

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 19, 2007, to revive the above-identified application.

The petition is GRANTED.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of March 2, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(ii)(A)(2). Accordingly, the date of abandonment of this application is June 3, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$405; (2) the petition fee of \$770; and (3) an adequate statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See *In re Application of S.*, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$510 extension of time fee submitted on September 4, 2007 and the \$1115 submitted with the petition on December 19, 2007 were subsequent to the maximum extendable period for reply, petitioner may request a refund of these fees by writing to the following address: Mail Stop 16, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

Telephone inquiries concerning this decision should be directed to Monica A. Graves at (571) 272-7253.

This application is being referred to Technology Center AU 3626 for processing of the RCE and for appropriate action by the Examiner in the normal course of business.

  
Brian W. Brown  
Petitions Examiner  
Office of Petitions